



83-SBE-062

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SHELDON AND MARION PORTMAN)

For Appellants: Sheldon Portman,
in pro. per.

For Respondent: John A. Stilwell, Jr.
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Sheldon and Marion Portman for refund of personal income tax in the amount of \$1,972 for the year 1974.

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The only question presented is whether the damage to appellants' single family residence constituted a deductible casualty loss within the meaning of Revenue and Taxation Code section 17206, subdivision (c)(3).

On or about October 16, 1973, appellants entered into a written agreement to purchase a new home in the San Jose area. The purchase was finalized in December 1973, and shortly thereafter appellants moved into their new home. During the months of October and November in 1973, the San Jose area experienced abnormally heavy rainfall. Soon after moving into their new home, the soil and foundation began to settle, causing severe damage to the house and front lawn. The damage included cracking of the walls, cracking of the foundation, and sinking of the subsoil.

Appellants estimated that the reduction in the property's market value was \$20,000. On April 15, 1978, appellants filed an amended California personal income tax return for the 1974 taxable year in order to claim a casualty loss deduction under Revenue and Taxation Code section 17206, subdivision (c)(3). On the amended return, appellants adjusted their taxable income by deducting from it the amount of the estimated reduction in market value. As a result, appellants claimed a refund in the amount of \$1,972. In response to an inquiry by respondent, appellants furnished a copy of a notification from the Internal Revenue Service informing appellants that their \$20,000 casualty loss deduction was disallowed because appellants had not established that the loss resulted from a casualty within the meaning of Internal Revenue Code section 165. Based on this information, respondent disallowed appellants' claim for refund. Appellants timely appealed respondent's action, and provided additional information in order to substantiate their entitlement to a casualty loss deduction.

The additional information provided by appellants indicated that heavy rainfall for the period October 1973 to February 1974, combined with improper drainage due to faulty construction, caused a rapid settlement of the soil supporting the structure. Under Revenue and Taxation Code section 17206, subdivision (c)(3), a taxpayer is entitled to a deduction for losses of property not connected with a trade or business if such losses arise from fire, storm, shipwreck, or other casualty, or from theft. Appellants recognize that damage due to faulty construction or poor design is not

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deductible as a casualty. loss. The word "casualty" denotes an accident, a mishap, or some sudden invasion by a hostile agency, but it excludes progressive deterioration through a steadily operating cause. (Appeal of Lewis B. and Marian A. Reynolds, Cal. St. Bd. of Equal., Oct. 3, 1967.) Appellants contend that the heavy rainfall during this period was a sudden and unexpected occurrence or "casualty" which caused the damage. Therefore, appellants believe they are entitled to a deduction for loss of property under section 17206, subdivision (c)(3).

Since Revenue and Taxation Code section 17206, subdivision (c)(3), is substantially similar to Internal Revenue Code section 165, subdivision (c)(3), respondent followed the federal report, and proposed a corresponding assessment of additional tax. Unless appellants can show that the federal determination was erroneous, its accuracy must be conceded. (Rev. & Tax. Code, § 18451; Appeal of Shedrick I. Barnes, Cal. St. Bd. of Equal., Jan. 7, 1975; Appeal of Alden W. and Virginia B. Spear, Cal. St. Bd. of Equal., April 20, 1964.) Appellants challenged the federal determination in the United States District Court for the Northern District of California, and appealed that court's adverse decision to the United States Court of Appeals, Ninth Circuit. However, the appellate court affirmed the decision of the lower court. (Portman v. United States, 683 F.2d 1280 (9th Cir. 1982).)

The determination of a federal court construing a federal statute is entitled to great weight in interpreting an identical state statute. (Meanley v. McColgan, 49 Cal.App.2d 203 [121 P.2d 45] (1942); Appeal of Estate of Adam Holzwarth, Deceased, and Mary Holzwarth, Cal. St. Bd. of Equal., Dec. 12, 1967.) Here the statutes are the same and the appellate court decided the precise issue that is now before this board. In view of these facts, the disposition of the case at the federal level is highly persuasive of the result that should be reached here. (Appeal of Dorothy C. Thorpe Glass Mfg. Corp., Cal. St. Bd. of Equal., Sept. 17, 1973; Appeal of Estate of Adam Holzwarth, Deceased, and Mary Holzwarth, supra.)

In reaching its decision, the appellate court found that a loss produced by the ordinary operation of the elements on a poorly constructed house would not qualify for a casualty loss. Furthermore, the court of appeals found that the heavy rainfall was not an

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unforeseeable occurrence which would justify a contrary result.

Appellants have offered this board no evidence that was not considered by the appellate court. **Rather,** they have made substantially the same arguments here that were made unsuccessfully before the appellate court. After a full consideration of the record, we find nothing that would justify reaching a conclusion different from that of the appellate court. **Accordingly,** respondent's action in this matter must be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Sheldon and Marion Portman for refund of personal income tax in the amount of \$1,972 for the income year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of March, 1983, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Nevins and Mr. Harvey present.

_____, Chairman
_ Ernest J. Dronenburg, Jr. _____, Member
Conway H. Collis _____, Member
Richard Nevins _____, Member
Walter Harvey* _____, Member

*For Kenneth Cory, per Government Code Section 7.9